FILED

January 5, 2018

INDIANA UTILITY

REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN WATER COMPANY, INC. ("INDIANA AMERICAN") AND THE CITY OF CHARLESTOWN, INDIANA ("CHARLESTOWN") FOR APPROVAL AND AUTHORIZATION OF: (A) THE ACQUISITION BY INDIANA-AMERICAN OF CHARLESTOWN'S WATER UTILITY PROPERTIES (THE "CHARLESTOWN WATER SYSTEM") IN CLARK COUNTY, INDIANA IN ACCORDANCE WITH A PURCHASE AGREEMENT THEREFOR; (B) APPROVAL OF ACCOUNTING AND RATE BASE TREATMENT; (C) APPLICATION OF INDIANA AMERICAN'S AREA ONE RATES AND CHARGES TO WATER SERVICE RENDERED BY INDIANA AMERICAN IN THE AREA SERVED BY THE CHARLESTOWN WATER SYSTEM ("THE CHARLESTOWN AREA"); (D) APPLICATION OF INDIANA AMERICAN'S DEPRECIATION ACCRUAL RATES TO SUCH ACQUIRED PROPERTIES; (E) THE SUBJECTION OF THE ACQUIRED PROPERTIES TO THE LIEN OF INDIANA AMERICAN'S MORTGAGE INDENTURE AND THE POTENTIAL ENCUMBRANCE FROM RIGHT OF FIRST REFUSAL; AND (F) THE PLAN FOR REASONABLE AND PRUDENT IMPROVEMENTS TO PROVIDE ADEQUATE, EFFICIENT, SAFE AND REASONABLE SERVICE TO CUSTOMERS OF THE CHARLESTOWN WATER SYSTEM.	)	**CAUSE NO. 44976**
VERIFIED COMPLAINT AND REQUEST FOR COMMISSION INVESTIGATION BY NOW! INC. AND CUSTOMERS OF THE CITY OF CHARLESTOWN AGAINST INDIANA-AMERICAN WATER COMPANY REGARDING ITS PROPOSED ACQUISITION OF THE CITY OF CHARLESTOWN'S WATER UTILITY.	)	**CAUSE NO. 44964**

OUCC's PROPOSED ORDER & FINDINGS ON SELECTED ISSUES

The Office of Utility Consumer Counselor ("OUCC"), by counsel, hereby submits proposed order findings and discussion on selected issues.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ***Office of Utility Consumer Counselor Proposed Order & Findings on Selected Issues*** has been served upon the following counsel of record in the captioned proceeding by electronic service on January 5, 2018.

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I. NOTICE UNDER IC 8-1-30.3-5(D)(1) AND (2)

Indiana-American Case-in-chief. In Joint Petitioners' case-in-chief, Indiana-American addressed the notice requirements of Ind. Code § 8-1-30.3-5(d). As Company witnesses testified, this statute requires three notices: notice to the distressed utility's customers, notice to the acquiring utility's current customers, and notice to the OUCC. Regarding notice to Indiana-American's own customers, Mr. Prine repeated Mr. VerDouw's assertion that the acquisition will not increase Indiana-American's rates by more than one percent of the company's base annual revenues. Further, he testified Indiana-American is not proposing any increase to its rates as a result of this acquisition. (Prine, p. 14) Mr. Prine did not address whether Indiana-American would provide a copy of the notice, instead referring to Mr. VerDouw's direct testimony. He testified notice to Charlestown's customers would be provided after the filing of the Petition, a copy of which Joint Petitioners ultimately filed on September 1, 2017 as late-filed Attachment MP-7. According to Mr. Prine, the OUCC was served a copy of the petition and case-in-chief at the time Joint Petitioners filed them. (Prine, p. 14)

Mr. VerDouw's August 17, 2017, direct testimony was corrected through a Submission of Corrections to Testimony filed October 24, 2017, shortly after our *Georgetown* decision. Specifically, Mr. VerDouw mentioned the October 11, 2017, *Georgetown* decision and its findings regarding an analysis under Subsection 30.3-5(d). (VerDouw REVISED, p. 13) Mr. VerDouw stated Indiana-American performed the calculation in response to a request from the OUCC. He attached that response to his testimony as Attachment GMV-2, noting this calculation yields a result that does not rise to the one percent impact contemplated by Subsection (d). Even still, according to Mr. VerDouw, Indiana-American committed to provide notice to its current customers during the acquisition in this case and in future acquisitions. He paraphrased the Commission's *Georgetown* order, indicating no harm in "over-notifying." (VerDouw-REVISED, p. 13) When discussing the notice, which he sponsored as Attachment GMV-3, Mr. VerDouw described the notice as a bill insert that includes items such as a website link for customers to review more detailed information. Mr. VerDouw did not explain or otherwise walk through his calculation other than what he stated in Attachment GMV-2, Indiana-American's response to OUCC discovery on this calculation.

OUCC Testimony. OUCC Witnesses addressed the notice requirements, as well. Mr. Kaufman recited Ind. Code § 8-1-30.3-5(d)(1) – (4), and he remarked Joint Petitioners failed to satisfy Subsection (d). In particular, according to Mr. Kaufman, Joint Petitioner Indiana-American did not provide the notice required to its current customers. (Kaufman, p. 7) He discussed Mr. VerDouw's statements regarding a bill insert that would serve as notice to Indiana-American's customers. To this point, Mr. Kaufman stated the proposed bill insert remains deficient in providing notice due to two shortcomings: timing and content. (Kaufman, p. 8)

With respect to the timing of notices, Mr. Kaufman expressed two concerns. First, he opined the statute applies whether or not rate impacts are concurrent with the pending acquisition. He disagreed with Indiana-American's assertion the one percent (or greater) rate increase only applies if the rate increase takes place concurrently with the acquisition. (Kaufman, pp. 8-9) He noted the Commission's *Georgetown* decision considered subsection (d)(2) applies even if the request for relief does not contain a concurrent adjustment to rates. Mr. Kaufman emphasized that order's finding regarding the need for Petitioner to include a reasonable calculation of the one

percent impact contemplated in Subsection (d)(2). Mr. Kaufman provided and explained at length his calculation showing the impact of the Charlestown acquisition triggers notice to be provided. (Kaufman, pp. 9-14) According to Mr. Kaufman, Indiana-American should have sent notice before petitioning the Commission to approve the acquisition. Timely notice would, he cautioned, permit Indiana-American's existing customers the opportunity to express their concerns about the pending transaction and its effects on their rates.

And to this issue of rate impacts, Mr. Kaufman argued the bill insert (Joint Petitioners' Attachment GMV-3) omits an explanation that the proposed Charlestown acquisition will cause rates to increase and does not signal at what level that impact will be. He testified a timely notice should at least include these two pieces of information. While the notice Indiana-American sent informed customers of its three pending acquisitions, it did not include notice of any corresponding or identifiable impacts to rates as a result of each acquisition.

Indiana-American Rebuttal Testimony. All Indiana-American witnesses provided rebuttal testimony in this Cause. Mr. VerDouw addressed as part of his responsive testimony to defend the Appraisal and other issues presented,, the OUCC's claims that Joint Petitioners' failed to satisfy Subdivision (d)(2).

Through Mr. VerDouw's rebuttal evidence, Indiana-American pushed back against the OUCC's review of the customer notice shortcomings. Mr. VerDouw argued the statute does not provide specifics, including how notice should be provided and what items the notice should contain. Mr. VerDouw reaffirmed and addressed the two issues regarding notice that appeared in *Georgetown* were at issue in this case, too: (1) notice to Indiana-American's customers and (2) the calculation of the statutory one percent precondition requiring when the notice must be sent. (VerDouw Rebuttal, p. 4)

Mr. VerDouw contended Indiana-American provided a calculation showing the one percent statutory provision had not been met but that Indiana-American provided notice all the same. He stated Indiana-American sent a bill insert, and included a copy of the insert as Joint Petitioners' Attachment GMV-3. (VerDouw Rebuttal, p. 14) Mr. VerDouw attested this notice was provided before the acquisition, countering Mr. Kaufman's claim the notice must be provided prior to petitioning the Commission for approval under Section 30.3. (VerDouw Rebuttal, p. 15) While discussing this mailing, Mr. VerDouw noted the insert informs customers of the acquisition, provides for the purchase price, and discloses that Indiana-American seeks to recover the cost of this purchase price. He added the bill insert directs customers to an Internet website, which includes links to the Commission's online docket portal for this Cause, the OUCC's calculation, and all other filings submitted in this proceeding. While maintaining his position no notice is required, Mr. VerDouw insisted Indiana-American met and exceeded its statutory obligation to provide notice.

Mr. VerDouw disagreed with the OUCC's versions of a reasonable calculation to show the one percent impact to a utility company's base annual revenues. (VerDouw Rebuttal, p. 16) He argued the OUCC's version inflates certain values. Specifically, Mr. VerDouw said none of the Charlestown assets or any other investments made by Indiana-American regarding the acquisition will be reflected in rate base and authorized revenue requirements until Indiana-American's next general rate case. He added Indiana-American's additional DSIC revenues would be factored in, thereby inferring the revenue number used by Witness Kaufman was understated in at least this regard. (VerDouw Rebuttal, p. 17) Mr. VerDouw noted Mr. Kaufman's calculations did not factor

in the net plant additions resulting from the agreed-on journal entry for this acquisition. He asserted flaws exist in Mr. Kaufman's revision of his calculation: that the OUCC's 0.997% impact is not 1% and that his own approach applied the requisite inputs in the appropriate, conservative level.

Commission Discussion & Findings. Indiana-American and Charlestown seek approval of Indiana-American's proposed acquisition of the Charlestown Water System. Indiana-American and Charlestown filed their Petition under Ind. Code § 8-1-30.3-5(d) and assert the proposed transaction satisfies the requirements of Ind. Code § 8-l-30.3-5(c). As such, they request the Commission approve the transaction under the terms and conditions of the Asset Purchase Agreement, finding such transaction is in the public interest in accordance with Ind. Code § 8-1.5-2-6.1(e)(1).

This case is only the second to involve the distressed utility statute. As we stated in the case of first impression, *Georgetown*, and as we adopt in this proceeding, particular attention is necessary when interpreting statutes. The express language of the statute controls and the rules of statutory construction apply. *Bushong v. Williamson*, 790 N.E.2d 467, 471 (Ind. 2003). In statutory construction, the primary goal is to ascertain and give effect to the intent of the legislature. *US. Steel Corp. v. N Ind. Pub. Serv. Co*., 951 N.E.2d 542, 552 (Ind. Ct. App. 2011). The language of the statute itself is the best evidence of legislative intent, and we must give all words their plain and ordinary meaning unless otherwise indicated. *Id*. If a statute is ambiguous such that it is susceptible to more than one interpretation, we seek to ascertain and execute the legislative intent. Where two statutes address the same subject matter, courts attempt to construe them in harmony. *Lake Co. Bd. of Elections and Registration v. Millender*, 727 N.E.2d 483, 486 (Ind. Ct. App. 2000). However, where statutes conflict, a more recent expression of the legislature generally prevails over an older one. *Id*. at 486-487.

Section 6.1 applies to a municipality that adopts an ordinance under Ind. Code § 8-1.5-2-5(d) after March 28, 2016, addressing the sale or disposition of nonsurplus utility property. Section 6.1(b) requires a municipality adopting such an ordinance to obtain Commission approval prior to the transaction occurring. Witnesses for Joint Petitioners testified Charlestown's municipal governing body adopted an ordinance approving the proposed acquisition of the Charlestown Water System by Indiana-American. Thereafter, Charlestown and Indiana-American entered into the Asset Purchase Agreement, for which they now seek Commission approval.

The Commission is required to approve the sale if we find that "the sale or disposition according to the terms and conditions proposed is in the public interest." Section 6.1(d). In evaluating whether the proposed transaction is in the public interest, Section 6.1(e) provides two avenues. First, under Section 6.1(e)(1), if a municipally owned utility files a petition under Section 30.3-5(d) and the Commission approves such petition under Section 30.3-5(c), then "the proposed sale or disposition is considered to be in the public interest." Alternatively, if Section 30.3-5 does not apply, Section 6.1(e)(2) requires the Commission to consider the degree to which the terms of the acquisition would require one utility's customers to subsidize service to the other and whether that subsidy would cause the transaction not to be in the public interest. In reviewing the proposed transaction under either Section 6.1(e)(1) or (e)(2), the Commission is also required to "consider the financial, managerial, and technical ability of the prospective purchaser to provide the utility service required after the proposed sale." Section 6.1 (e)(3).

Joint Petitioners filed their petition under Section 30.3-5(d) seeking Commission approval of such petition under Section 30.3-5(c). Therefore, we must consider whether the requirements of Sections 30.3-5(d) and (c) have been satisfied. As an initial matter, we note that Chapter 30.3 applies if: (1) a utility company[1] is acquiring property from another utility company in a transaction involving a willing buyer and willing seller at a cost differential; and (2) one of the two utility companies is subject to our regulation. There is no dispute that Indiana-American is subject to our regulation (as is the municipally owned utility and seller, Charlestown), and there is no dispute that this transaction involves a willing buyer and a willing seller. In addition, although there is a dispute concerning the precise amount of the cost differential as it relates to the validity of the Valuation Report, there is no dispute the acquisition includes a cost differential. Accordingly, we find Joint Petitioners may seek Commission approval of the proposed transaction under Chapter 30.3.

Indiana Code § 8-1-30.3-5(d) provides that a utility filing a petition under this section must provide three notices: (1) notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility; (2) notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than 1% of the utility company's base annual revenue; and (3) notice to the Office of the Utility Consumer Counselor. We discuss these requirements in more detail below.

Parties designated large portions of their testimonies and supporting documentation to the requirements of Subsection 30.3-5(d), with much discussion allotted to subdivision (d)(2). Through Mr. VerDouw, Indiana-American testified there will be no increase to rates in an amount that is greater than one percent of its base annual revenues. Consequently, Indiana-American asserted it did not have to notify its existing customers of the proposed acquisition but did so all the same. As stated by Mr. VerDouw, in response to our Final Order in Cause 44915, Indiana-American provided notice to its customers through bill inserts in the November 2017 billing cycle. The OUCC presented evidence that Joint Petitioner's methodology to calculate the precondition was erroneous, and the impact was one percent or greater. The OUCC argued even though Indiana-American sent a bill insert, it was not helpful for customers to understand the rate impacts of the Charlestown acquisition. In rebuttal testimony, Indiana-American maintained its position regarding its requirement to send notice, supported the contents of the bill insert it sent, and argued even if required, the notice only had to be sent prior to the acquisition (and not before filing a Petition, as the OUCC argued). We agree with Indiana-American and the OUCC, albeit for different reasons and to varying degree.

Customers' due process requires (d)(1) and (d)(2) notices be sent timely enough to afford the opportunity to react, and Joint Petitioners failed to satisfy 5(d)(2) in this regard.

Pursuant to Ind. Code § 8-1-30.3-5, "A utility company may petition the commission in an independent proceeding to approve a petition under subsection (c) [§ 8-1-30.3-5(c)] *before the utility company acquires* the utility property…." (Emphasis added) The statute directs notice be

[1] A utility company is defined as a public utility, municipally owned utility, or not-for-profit utility that provides water or wastewater service. Ind. Code § 8-1-30.3-3(1).

sent before the proposed acquisition. As indicated by the evidentiary record and our reading of applicable law, the utility company (Indiana-American) will not acquire the distressed utility's nonsurplus assets until after the Commission grants the request. It must first ask for that approval. The evidence shows notice to Indiana-American's customers was not sent before it petitioned the Commission (August 17, 2017), and was instead sent later during the company's November 2017 billing cycle. We recognize neither Ind. Code § 8-1-30.3-5(d)(l) nor (2) require notice to be served before a petition is filed seeking approval of a proposed acquisition. However, doing so would increase transparency and could avoid challenges like those raised during this proceeding.

An underlying responsibility of this Commission is to find public interest in addressing requests before it. This commitment applies when interpreting statutes, and especially where the legislature has identified the need to determine public interest. *See*, e.g., Ind. Code § 8-1.5-2-6.1. Using the language given to us by the legislature as our foremost guide, we must not interpret a statute to be contrary to public interest. The nature of public utilities makes their regulation matters of public interest. *See*, e.g., *BP Products North America, Inc. v. Indiana Office of Utility Consumer Counselor*, 947 N.E.2d 471, Ind. App., (Apr. 25, 2011) (discussing what characteristics make public utilities "public").

As we indicated above, the statute tells us notice must be provided before the acquisition. The legislature enacted this statute in order for both the utility company's customers and the distressed utility's customers to be put on notice. Notice has to have some meaning, including when it is provided. There must be an opportunity for customers receiving the notice to react. A reading of this statute that fails to account for customers' opportunity to participate makes the statutory requirement useless. We cannot nullify or interpret laws to be unworkable. Notice is not effective if it leaves very little or no time for customers to respond. Certainly, the legislature intended the notice required by these statutes to be useful.

To this end, the record reflects both (d)(1) and (d)(2) notices were sent. Notice to Charlestown's customers that included a rate impact was sent in late August 2017, a copy of which Joint Petitioners filed late as Attachment MP-7 (September 1, 2017). Notice to Indiana-American's customers was sent during the November 2017 billing cycle in the form of a bill insert. We held an evidentiary hearing on December 13th, 14th, and 15th. At that point, Indiana-American's existing customers had little recourse before the evidentiary record closed. Further, time is of the essence in these types of cases. The Commission must issue an order within two hundred ten (210) days of Petitioner's case-in-chief filing. Ind. Code § 8-1-30.3-5(e).

The interest of customers to be afforded notice must not be overlooked or overstepped. Sending the notice to Charlestown's customers within two weeks of the Petition, while not optimal, does not hamper due process for Subsection 30.3-5(d) purposes. Accordingly, we find Joint Petitioners' notice to the customers of Charlestown did not infringe on their ability to participate in this proceeding. This is not the case with respect to notice to Indiana-American's current customers. Indiana-American should have provided notice to its own customers earlier than just days before the evidentiary hearing. Accordingly, we find Indiana-American's notice to its customers failed to comply with the requirements of Ind. Code 8-1-30.3-5(d)(2).

We recognize and appreciate the legislature's intent to encourage the timely acquisition of distressed utilities, and we equally value its determination that notices be afforded to impacted customers. Reconciling this, notices must be provided early enough in the proceeding to keep it efficiently underway all the while giving customers the opportunity to provide comments or

otherwise participate. We expect the acquiring party to provide evidence into the record showing any notice given to customers was provided timely enough that customers' due process was not hampered. To keep the proceeding within its two hundred ten (210) window, such evidence could be provided as part of petitioner's case-in-chief, much like late-filed Attachment MP-7.

The notice requirement of subdivision 5(d)(2) applies in this case, and Joint Petitioner's calculation fails to consider proper factors needed to determine the proposed acquisition's effect on base annual revenues.

This leads into our discussion of when notice must be sent and when doing so is optional. The former occurs when the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent of the utility company's base annual revenue. It must be sent, undeniably, to the distressed utility's customers every time. This case is one when notice to both sets of customers is required.

Section 6.1(d) provides that a utility may petition the Commission in an "independent proceeding" to approve a proposed acquisition. The word "independent" is generally defined as "not dependent," "not subject to control by others," and "not requiring or relying on something else."[2] Consequently, the legislature clearly contemplated that a petition seeking approval of a proposed acquisition could, and would, be filed independent of any other request for relief. Whether the request for recovery in rates is made in this proceeding or a later proceeding does not alleviate the requirements of Subdivision 5(d)(2). Joint Petitioners have not made, and the record does not reflect, a request for concurrent adjustment to rates to reflect Indiana-American's inclusion of the acquisition in its existing rates and charges.

Nothing in the statute indicates this notice provision applies only if the utility also includes in its petition a request for a rate increase. Equally, it does not stipulate a time period for assessing whether the proposed acquisition "will" increase the utility company's rates. As we emphasized in our decision in *Georgetown*, "the purpose of the inquiry required by Section 30.3-5(d)(2) is not to set rates, but to determine merely whether the utility should provide notice to its customers of a proposed acquisition that will affect the rates they pay in the future." If a "utility company overestimates the ratemaking effect of its acquisition, the only harm will be that its customers will have received information they would not otherwise have received." *Georgetown* at 12. Moreover, "informing customers of an acquisition that impacts their rates at the time of the acquisition affords customers the intended due process to contest the acquisition." *Id.* "Without notice of a proposed acquisition that will or is expected to increase rates in the future, a customer's ability to contest that acquisition is severely hampered if notice is not provided until the utility actually files for a rate increase." Consequently, "the notice requirements of Section 30.3-5(d)(2) should be implemented in any case where a reasonable analysis indicates an effect on the utility's rates will be greater than 1% of the utility's current base annual revenues." As such, "we would expect the utility company to rely on reasonable projections and assumptions. The analysis should also be included in its case-in-chief. *Id.* We applied this standard in that case, and we adopt it here.

One could employ multiple methodologies to estimate the potential impact to the utility company's existing customers. *Id.* at 12 -13. Indeed, the record in this proceeding provides us several, albeit conflicting, calculations. Parties provided calculations at various times in this

[2] www.merriam-webster.com/dictionary/independent.

proceeding, ultimately introducing into the record calculations developed through different methodologies. This presents an opportunity to review various approaches, as we do below.

This discussion requires us to note points of agreement and disagreement between the parties that offered calculations (the OUCC and Indiana-American). The Parties disagreed on how to calculate additional depreciation and property tax expense. The record reflects the depreciation expense generated by the Charlestown acquisition will be approximately $766,016. Indiana-American offset (reduced) this figure by its average depreciation per customer ($139.12 * 2,898 or $403,170), thus adding only $362,859 in net depreciation. While the OUCC offset (reduced) the additional depreciation by Charlestown's 2016 annual depreciation as provided in its IURC annual report of $53,494, thus adding $712,522 in net depreciation. The OUCC's calculation more accurately reflects the additional depreciation expense that Indiana-American will incur as a result of its proposed acquisition. Indiana-American's calculation inappropriately applies its depreciation expense as an offset to determine the rate impact of its acquisition.

The Parties had a similar disagreement on how to calculate estimated property taxes. Again, both parties concurred with estimated property taxes that Indiana American will pay to the City of Charlestown is $300,000. Indiana American offsets this amount by the average property tax per customer that Indiana American ratepayers currently pay. This produces a proposed offset of $92,329 and creates additional property taxes of $207,671. While the OUCC used the actual property taxes (or PILT) that Charlestown "paid" in 2016. However, Charlestown did not pay PILT in 2016 and the OUCC explained there should be no offset. Thus, the OUCC's calculation used $300,000 in property tax expenses to calculate the 1.0% threshold.

Both the OUCC and Indiana-American provided calculations that sought to follow the instructions we provided in *Georgetown*. Parties offered into the record their responses to a Commission docket entry through which we instructed parties to recognize the gross revenue conversion factor should only be applied to the equity portion of the "Additional Return Required," or explain why the gross revenue conversion factor should be applied to cost of capital. This was an effort to further develop methodologies already presented before us. At the hearing, Presiding Officers instructed Indiana-American to recognize its revised investment of $13.2 million in its calculation of the possible one percent impact. While both parties sought to follow our instructions, they disagreed on the precise calculation.

Indiana-American calculated an interest synchronization of $457,720, and subtracted this figure from its calculated additional return of $1,188,052. Indiana-American then grossed up the difference $730,832 by its gross revenue conversion factor. In its docket entry response (Public's Exhibit No. 6), the OUCC took a different approach:

> The OUCC does not disagree with Indiana-American's decision to apply the authorized Gross revenue Conversion Factor to the Total additional return. When a utility seeks a rate increase the utility's required additional net income is multiplied by the utility's Gross Revenue Conversion Factor. The incremental income in an acquisition case can be treated similarly, especially when funding sources are not precisely distinguished between debt sources and equity sources. If the conversion factor were applied only to the equity portion of the Additional Return Required, then the rate of return should not be cost of capital. Instead, it should be cost of equity. In this case, the acquiring utility has not identified a precise funding source for its proposed acquisition. As such, it is reasonable to use its

weighted cost of capital and then gross up that weighted cost of capital by the utility's Gross Revenue Conversion Factor.

In the footnote to its response, the OUCC provided an alternative approach:

> An argument could be made to recognize both debt and equity as being used to fund a proposed acquisition. If this approach were taken, the OUCC recommends the following application. First, the alternative calculation would be based on investor-supplied capital (zero cost capital is not used to finance the proposed acquisition). As applied to this case, and when using data from its DSIC-10 proceeding, Indiana-American has investor-supplied capital that is approximately 49.85% equity (9.75% cost) and 50.15% debt (6.08% cost). If Indiana-American's Gross Revenue Conversion Factor were applied only to equity this would produce a pre-tax weighted cost of 11.25% (49.85% * 9.75 * 1.677489 + 50.15% * 6.08 = 11.20%). The effective weighted cost used by both the OUCC and the Indiana American is 11.07% (6.60% * 1.677489 = 11.07%).

We find the more reasonable approach is that the gross revenue conversion factor should be applied but only to the equity portion. To this end, we agree with the OUCC's calculation. For purposes of determining if the one percent precondition is triggered, we should limit the application of the gross conversion factor to investor-supplied capital. Based on its DSIC 10 proceeding, Indiana-American has a capital structure that is approximately 50% equity and 50% debt.

Having reviewed all methodologies submitted into the record of this Cause, we recalculated the impact on rates to Indiana-American's existing ratepayers that will occur as a result of the proposed acquisition. The proposed purchase price in this cause is $13,583,771 and Indiana American has recognized that it will be required to invest $13,200,000 in the Charlestown system. Before grossing up for taxes, the proposed acquisition will require an additional equity component of $874,908 and a debt component of $548,867. When the equity component is grossed up for taxes the additional return that will be required from this transaction is $2,016,516. The additional depreciation expense caused by this acquisition is $766,016. Based on its 2016 IURC annual report, the City of Charlestown paid $53,494 in depreciation. Thus, the net depreciation expense is $712,522. As explained above, the net additional property taxes that Indiana-American will pay on the Charlestown system is $300,000. The proposed acquisition will cause revenue requirements to increase by $3,029,038. Based on an authorized revenue requirement of $207,529,092, the proposed acquisition will cause Indiana-American's rates to increase by 1.45%.

This rate impact exceeds the one percent threshold under Ind. Code § 8-1-30.3-5(d)(2). Accordingly, we find Joint Petitioner Indiana-American was required by law to provide notice to its customers. The record reflects Indiana-American provided a bill insert to customers. Indiana-American stated this bill insert satisfied Subsection 5(d). It does not. While Joint Petitioners sent something in response to Subsection 5(d)(2), we find this notification to be inadequate. As we discussed earlier, while sent in response to Section 5's notice requirements, the notification was sent at an improper time. Joint Petitioners provided this notice too late in the process for it to be effectively useful for recipients. We find the notification is similarly defective on content grounds, which we discuss more fully below.

Joint Petitioner's notice does not contain certain minimum information to be informative, useful and effective for Section 5(d)(1) and 5(d)(2) purposes.

Any notice sent to comply with Section 30.3-5(d) must address rate impact. What is provided to customers cannot simply be *something*. It has to be meaningful. Just as the timing has to allow for recipients to respond accordingly, so too does the content of that notice. Recipients (customers) must know what it is they received and how they will be impacted. This is achieved through a basic level of required information contained in the notice. When given, the notice should tell customers the rate impact referenced in subsections 5(d)(1) or (2) to enable customers to understand the impact the proposed acquisition will have upon their rates and make informed decisions upon whether to participate in the acquisition proceedings, request a field hearing, or take other action.

Ind. Code § 8-1-30.3-5(d)(1). Subdivision 5(d)(1) is clear: "notice of the proposed acquisition and any changes in rates or charges to customers of the distressed utility." (Emphasis added) Quite clearly, notice that does not inform customers of changes in their rates and charges is not "notice" for subdivision (d)(1) purposes. As reflected in Attachment MP-7, Indiana-American's notice to Charlestown residents and customers was sent as two separate letters: one dated June 28, 2017 and one dated August 28, 2017. Only the August letter includes a statement regarding a change in rates, for a user of 4,000 gallons per month. While it does identify the change for customers using this amount, it does not tell Charlestown customers who use other volumes of changes to their rates and charges. Presumably, to cover these customers, Indiana-American provides a web link to the Commission's online resources and to the Company's own Internet site. While these additional resources are helpful for customers, we caution Joint Petitioners' reliance on an Internet resource to make their notice complete. Not every recipient of the notification letter will also be users of the Internet. The notice needs to be complete on its own. However, while not as thorough as this Commission would like it to be, the August letter does contain some statement of changes to rates and charges. Accordingly, we find Joint Petitioners have satisfied Ind. Code § 8-1-30.3-5(d)(1).

Ind. Code § 8-1-30.3-5(d)(2). Notice to the acquiring utility's existing customers must also include information regarding rate impacts. Subdivision 5(d)(2) clearly addresses this: "…notice to customers of the utility company if the proposed acquisition will increase the utility company's rates by an amount that is greater than one percent (1%) of the utility company's base annual revenue…." (Emphasis added) A notice without a rate impact is not "notice" for 5(d)(2) purposes. This applies to a notice sent strictly in response to subdivision 5(d)(2) or one sent to exceed it (as Indiana-American attested it did). If notice is sent irrespective of the one percent threshold the notice must contain rate impacts stating an increase of less than one percent (or a decrease, if applicable). If notice is sent because the proposed acquisition will increase rates greater than one percent that notice must clearly state this change.

As we stated earlier, 5(d)(2) applies in this case. The risk of insufficient notice requires us to apply the same scrutiny whether the utility company *had* to send this notice or *chose* to send this notice. In this case, Joint Petitioners offered Attachment GMV-3 into the record. As Mr. VerDouw testified, this document was sent to serve as notice to Indiana-American's customers but also in an effort for Indiana-American to exceed subsection 5(d)(2). VerDouw Direct (Revised) at 13.

This notice does not include rate impacts, and we find it insufficient for 5(d)(2) purposes. As we noted above, notice should tell customers the rate impact, enabling them to understand the impact the proposed acquisition will have upon their rates and to make informed decisions upon whether to participate in the acquisition proceedings, request a field hearing, or take other action. Attachment GMV-3 does not contain one statement or assessment of rate impacts that current customers can expect as a result of this proposed acquisition. The bill insert offers acquisition amounts, anticipated acquisition dates, and a general statement regarding Commission approval "for ratemaking purposes" but nothing clearly indicating rate adjustments as a result of it buying the Charlestown water system. Attachment GMV-3 at 3. Similarly, like the notice to Charlestown's customers, it also includes a link to Internet resources. Again, not every recipient of the notification will also be users of the Internet, and the notice needs to be complete on its own. Inclusion of website links is useful but only if it supplements information otherwise fully contained in the notice. This is not the case here. Indiana-American's notice to its own customers, while alerting them that this acquisition (and two others) is underway, it does not tell them rate impacts – at best only alerting them that it seeks some ratemaking treatment. Accordingly, we find Joint Petitioners have not satisfied Ind. Code § 8-1-30.3-5(d)(2).

II. NOTICE REQUIRED UNDER IND. CODE § 8-1-30.3-5(D)(3)

Pursuant to IC § 8-1-30.3-5(d)(3), a utility company may petition the commission in an independent proceeding to approve a petition under subsection (c) before the utility company acquires the utility property "if the utility company provides notice to the Office of Utility Consumer Counselor." Notice was provided to the OUCC when Joint Petitioners filed their petition and case-in-chief and the OUCC received a service copy. As the OUCC is a statutory party to all proceedings before the Commission, Joint Petitioners provided no notice to the OUCC under the statute that is not already required as a matter of course. Indiana-American noted Section 30.3-5(d) includes no specific information regarding when and in what manner notice should be provided to the OUCC. Indiana-American has construed this requirement in a manner that imposes no additional burden on it. Presumably, the Indiana General Assembly did not intend to adopt a notice requirement that merely duplicated existing practice. But the OUCC made no comment as to whether it had received the notice required by this subsection, and it has not proposed any finding that such notice was defective. Accordingly, we need not address in this order whether the Indiana General Assembly truly intended to adopt a notice requirement that has no meaningful effect.

III. JOINT PETITIONERS DID NOT PROVIDE A PLAN UNDER IC 8-1-30.3-5(D)(4)

Joint Petitioners' Case-in-chief. Mr. Stacy Hoffman, Director of Engineering at Indiana-American, said his testimony would describe the information Indiana American had regarding Charlestown's system, its challenges, and "the approach Indiana-American will likely take to address those challenges." (Hoffman, p. 4) Mr. Hoffman explained that if the acquisition is approved by the Commission, between now and closing he planned to spend more time with people from Charlestown to better understand the context of the information he has had access to and the operation of the system. (Hoffman, p. 4.) Mr. Hoffman stated that Indiana-American's history of

delivering quality water is built on a commitment to higher standards for its operations that may not be fiscally prudent or possible for smaller water utilities. (Hoffman, p. 11) Mr. Hoffman noted Charlestown's water quality issues, including brown water and water age. Mr. Hoffman discussed the potential solutions that Indiana American could investigate if it acquired the system. He explained Indiana American will begin by thoroughly testing, evaluating and understanding the raw water concentration of manganese. (Hoffman, p. 13)

Mr. Hoffman testified certain areas or depths in the aquifer could contain less manganese or less mobile manganese and it may be possible that one or two of the wells have lower manganese concentrations. But he testified he had not seen information on manganese concentrations of individual wells in the well field. He said this could be investigated through test drilling, pumping and sampling. Mr. Hoffman said existing wells can also be individually sampled, but the future outcome of such an investigation is uncertain at this time. Mr. Hoffman suggested that even if an area or depth is discovered with much less manganese, the manganese concentrations may still require additional treatment. He added that initially low concentrations of manganese could increase over time if manganese from other parts of the aquifer are drawn into any new wells.

Mr. Hoffman stated that because of the existing accumulation of manganese in the distribution system, after implementing filtration of the source water, vigorous uni-directional flushing of the distribution system would likely be necessary for a period of time to help remove the accumulated manganese in the distribution system. However, Mr. Hoffman added that implementing removal of manganese via filtration would help prevent further manganese from entering and accumulating in the distribution system after that point. Mr. Hoffman did not state that filtration should be installed but that it would be prudent to investigate filtration. (Hoffman, p. 14) Mr. Hoffman also noted that several of the free chlorine residual concentrations identified in the Charlestown monthly water quality reports submitted to IDEM were near or below what the State of Indiana defines as detectable, which is 0.2 mg/L, (327 I AC 8-2-1 Sec. 1 (98) (A)). (Hoffman p. 16). Mr. Hoffman said this is a significant issue which he noted Mr. Saegesser properly recognizes needs to be addressed first. (Hoffman, pp 16 - 17) Mr. Hoffman testified he had not yet studied the water age in the Charlestown distribution system. He added he also had not studied the improvements proposed in the Saegesser Preliminary Engineering report, he expected that many of the proposed improvements could be valuable for effective operation of the system. (Hoffman, p. 17)

Mr. Hoffman indicated that because of manganese accumulation and because optimal results have not been achieved by Charlestown, the distribution system should be addressed and Indiana-American should investigate the source water. (Hoffman, p. 13) Mr. Hoffman indicated that depending on the results of its investigations Indiana-American may locate another source of supply farther away from the existing location, treat Charlestown's groundwater supply and employ vigorous unidirectional flushing of the distribution system. (Hoffman, p. 14) Mr. Hoffman said that the likelihood of locating a supply that would not eventually need additional treatment, like sequestration or removal of iron and manganese, is uncertain at this time. (Hoffman, p. 13.) Mr. Hoffman said another possible solution for Indiana-American is treatment of the existing well supply by removal of manganese through oxidation and filtration or adsorption, and filter backwashing. (Hoffman, p. 14.) Mr. Hoffman testified that following closing, the next steps of the plan include identifying further improvement needs through (1) a more thorough evaluation of the Charlestown system (after closing) and (2) direct operation of the system upon acquisition. (Hoffman, p. 18.)

OUCC's Testimony. Mr. Carl N. Seals, Utility Analyst with the OUCC, testified that IC § 8-1-30.3-5(d), pursuant to which Joint Petitioners requested approval of its petition before the acquisition, requires the utility company acquiring the assets to provide "a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility." IC § 8-1-30.3-5(d)(4). (Seals, p. 2.) Mr. Seals testified that Indiana-American did not provide such a plan, and therefore should not be considered to have qualified for the statutory remedy. Mr. Seals noted that instead Indiana-American suggested it needs to do a more thorough evaluation of the Charlestown system, including experience that it will gain through direct operation of the system. (See Mr. Hoffman's testimony, Joint Petitioners' Exhibit No. 6, p. 18.) Mr. Seals said Mr. Hoffman spoke in terms of possible solutions, likely improvements from Mr. Saegesser's Preliminary Engineering Report, and "further evaluation." Mr. Seals added Mr. Hoffman expected that investments may exceed the amount identified in the asset purchase agreement. (*Id*.) Mr. Seals listed the "possible solutions" Mr. Hoffman briefly mentioned in his testimony. These consisted of "addressing the distribution system;" "thoroughly testing, evaluating, and understanding the raw water concentrations of manganese;" "locating another source of supply farther away from the existing location;" "treatment of the existing well supply by removal of manganese through oxidation and filtration or adsorption, and filter backwashing;" and "unidirectional flushing."

Mr. Seals noted none of the foregoing "possible solutions" were developed. As an example, addressing whether the utility should install filtration, Mr. Seals said Mr. Hoffman stated "That is not my testimony," and added only that it would "be prudent to investigate filtration." (See Joint Petitioners' Exhibit No. 6, p. 14.) Mr. Seals also testified that Mr. Hoffman had not studied the improvements proposed in Mr. Saegeser's preliminary engineering report. Nonetheless, he "expected that many of the proposed improvements could be valuable for effective operation of the system." (Seals at p. 4 citing Joint Petitioners' Exhibit No. 6, p. 17.)

Mr. Seals noted the OUCC sought additional information as to Indiana-American's required plan for reasonable and prudent improvements. Mr. Seals explained the OUCC asked for all plans for reasonable and prudent improvements to the system but were directed back to Mr. Hoffman's testimony. Joint Petitioner Indiana-American responded with the following information:

> Information Provided:
>
> Please refer to page 18 of Mr. Hoffman's direct testimony for reply to this request, which is attached as "OUCC DR 1.15-R1.pdf". Additionally, Indiana American anticipates making improvements to the supervisory and data acquisition (SCADA) system. A detail cost of possible SCADA improvements is not determined at this time. Indiana American will also further evaluate customer meter performance and/or age upon acquisition to determine a schedule for replacing meters. The timing and cost of any meter replacements is not determined at this time. As Indiana American identifies further improvement needs with more thorough evaluation and with direct operation of the Charlestown system, Indiana American will incorporate the improvement needs in its capital planning and investment prioritization models. (Emphasis added)

Mr. Seals said Indiana-American has really only indicated it has a plan to form a plan.

While the response includes for the first time references to SCADA and replacing meters, Mr. Seals noted neither SCADA nor replaced meters directly address Charlestown's water quality issues. Mr. Seals stated that, through Mr. Hoffman's testimony, Indiana-American provides little in the way of a tangible "plan for reasonable and prudent improvements." IC 8-1-30.3-5(d)(4). He noted Mr. Hoffman's testimony does not identify specific action items that tie to any particular component of the Charlestown system. He asserted Indiana-American's promise to "[identify] further improvement needs with a more thorough evaluation of the system" is *not* providing a plan for reasonable and prudent improvements.

Mr. Seals stated what the OUCC expected to see in a plan required by IC 8-1-30.3-5(d)(4). Depending upon the nature of the acquisition, i.e. whether or not there are significant operational challenges faced by the distressed utility, Mr. Seals indicated a plan would identify the projects, state which components of the water system would be affected (e.g. source of supply, water treatment, transmission/distribution mains, storage, metering facilities, etc.), identify when those projects would be commenced, estimate what the specific projects would cost, and explain how the projects would address each problem. Mr. Seals testified this level of detail would provide the OUCC and the Commission with the information necessary to determine whether the plan includes improvements that are reasonable and prudent and otherwise satisfy the criteria of IC 8-1-30.3-5(d)(4). (Seals, p. 5.)

Joint Petitioner's Rebuttal Testimony on Plan. In his rebuttal testimony, Mr. Hoffman disagreed that Indiana-American had not provided a plan as required by Ind. Code § 8-1-30.3-5(d)(4). Mr. Hoffman said that, in order to understand what is really required, it is critical to consider the context in which the statute requires a "plan". Mr. Hoffman noted Indiana-American seeks IURC approval of Indiana American's acquisition of a distressed utility, which acquisition will not be completed until after IURC approval is obtained and other closing conditions in the purchase agreement are satisfied. Mr. Hoffman asserted that until Indiana American owns the system, it cannot and should not perform the kind of evaluations necessary to develop specific "projects" and details described by Mr. Seals. Mr. Hoffman asserted it would be a waste of time and money for Indiana-American to identify, engineer and design the detailed "project" list described by Mr. Seals before it owns the system and has gathered the information that operating the system will provide. (Hoffman Rebuttal, p. 3)

Mr. Hoffman asserted the statute does not require a detailed project list. He asserted the statute only requires that Indiana-American have a "plan" for "improvements" – not "projects," and those "improvements" can include improvements to plant or operations. Mr. Hoffman said that what Indiana-American *can* do is identify the steps it will take to implement improvements to both plant and operations that will solve the water quality problems. Mr. Hoffman said Indiana American "will proceed through those steps as quickly as possible, which will produce the ultimate solution that will result in the Charlestown customers receiving water of superior quality matching that which is currently delivered to other customers in our Southern Indiana Operations." Mr. Hoffman asserted Indiana-American's plan identifies the requisite steps toward developing projects or changes in operations that will be the ultimate solutions to be implemented in the Charlestown system.

Mr. Hoffman asserted that "prior to owning the system, it simply is not possible for Indiana American to identify the specific projects." He added that "Only after closing can we gather the information he described in his direct testimony and incorporate the system into the Indiana American asset management system and prioritization models or its detail capital expenditure

plans as I explained in my direct testimony." (Hoffman, p. 3.) Mr. Hoffman claimed that in preparing his direct testimony, he performed a substantial amount of work to understand the current state of the Charlestown system (as evidenced by the voluminous attachments containing material I consulted in making determining the best next steps for improvements to the operations and system)." Mr. Hoffman asserted he had presented a plan listing the reasonable and prudent next steps following closing.

Mr. Hoffman argued this is not like a case under the energy utilities' TDSIC statute. That statute requires an electric utility to file a "plan" covering a system that it already owns for "eligible transmission, distribution and storage improvements," which are defined in the statute as 'projects." Mr. Hoffman asserted Indiana American is not seeking in this proceeding ratemaking treatment for any of the possible solutions identified in his direct testimony. Mr. Hoffman stated that nowhere does the distressed utility statute refer to "projects." Instead, it refers only to "improvements," which he noted is not defined in the statute, but is commonly defined as "an act or process of being improved. Mr. Hoffman said that what he described in his direct testimony is a plan for improvements.

Mr. Hoffman noted the statute requires that Indiana American have "a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility." He added that Indiana Code § 8-1-30.3-6 explains what it means for a distressed utility to have failed to furnish or maintain "adequate, efficient, safe, and reasonable service and facilities," including where the utility "due to necessary improvements to its plant or distribution or collection system or operations, is unable to furnish and maintain adequate service to its customers at rates equal to or less than those of the acquiring utility company." Mr. Hoffman asserted that his direct testimony described Indiana American's plan for those improvements in as much detail as is possible prior to owning the system.

Mr. Hoffman asserted that what Indiana American has presented in its case in chief is a plan in the context of an acquisition case like this. Mr. Hoffman said he discussed the next steps of the plan following closing, including identifying further improvement needs through (1) a more thorough evaluation of the Charlestown system (after closing) and (2) direct operation of the system upon acquisition. The fact that the plan must necessarily proceed in steps and may change course depending on the outcome of an earlier step does not mean it is not a plan. He explained "that is why our plan necessarily proceeds in phases to allow us to respond most effectively. Our method to achieve the end of improving Charlestown's system after closing is clear from my earlier testimony." (Hoffman Rebuttal, p. 6.) He asserted the statute does not require cost estimates to be included in the "plan" or, in fact, list any specific requirements of what must be included in the plan. Nonetheless, Mr. Hoffman noted the investment committed to in the asset purchase agreement and expected the needed investments will meet and may exceed that amount. (Hoffman, p. 6.)

Indiana-American witness, Mr. Prine responded from a policy standpoint to Mr. Seals' assertion that Indiana-American had not provided a plan as required by Ind. Code § 8-1-30.3-5(d)(4). He asserted that not one party doubts that Indiana American will fix the water quality problems that Charlestown has been unable to fix, and which have persisted over the course of decades and numerous administrations. Mr. Prine noted the OUCC does not oppose the transfer of the system to Indiana American, and Mr. Isgrigg conceded that he is confident Indiana American has the capability to address these problems. Mr. Prine asserted time has already proved that Charlestown is not going to address its brown water problem. Mr. Prine stated "In the simplest

form, our plan is to run a regulated utility free of partisan political claims of neglect, misappropriation, and malfeasance." (Prine Rebuttal at p. 10.) He testified that Indiana American plans "to operate a system which reliably and prudently invests in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations of Charlestown citizens." Mr. Prine then recited the preamble to utility regulation during the 2016 Session: "The general assembly declares that it is the continuing policy of the state, in cooperation with local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to create and maintain conditions under which utilities plan for and invest in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations of Indiana citizens." IC 8-1-2-0.5.

Commission Discussion and Findings. Joint Petitioners have requested favorable ratemaking treatment authorized under IC § 8-1-30.3-5(c), which would, in effect, allow Indiana-American to book as original cost the entire purchase price it pays for Charlestown's assets as well as incidental expenses and other costs of acquisition. IC § 8-1-30.3-5(e). Joint Petitioner Indiana-American has not yet acquired Charlestown's nonsurplus property. Accordingly, Joint Petitioners filed their cause pursuant to IC § 8-1-30.3-5(d), which authorizes a utility company to file a petition under subsection 5(c) *before* the utility company acquires the utility property subject to certain conditions. These conditions consist of providing the notices set forth under IC § 8-1-30.3-5(d)(1), (2) and (3) and "a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility." IC § 8-1-30.3-5(d)(4). When read in the context of the entire statutory scheme, the plain language of section 5(d) establishes that if a utility company has not provided "a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility" it hopes to acquire, it should not be authorized the relief afforded by Chapter 30.3. Until it has qualified to proceed under IC 8-1-30.3-5(d), whether it has satisfied the criteria stated in subsection 5(c) need not be and should not be examined.

In its case in chief and petition, Joint Petitioners asked for *approval* of Indiana-American's plan for improvements. The OUCC pointed out there is a difference between the Commission *approving* a plan for improvements and *finding* that the acquiring utility *has provided* a plan for reasonable and prudent improvements. In its rebuttal case, Joint Petitioners clarified that they are no longer asking for approval of the plan. Although the OUCC probed in cross examination, no Indiana-American witness explained why it had decided it was no longer asking for *approval* of its plan. Presumably, there is a higher evidentiary standard for the latter. Possibly Indiana American withdrew its request because it realized its evidence fell short of justifying such approval. Indeed, Indiana-American has retreated to the more accessible ground of merely having to show that it *has* a plan. (Hoffman Rebuttal, p. 3) But while there may be a difference between establishing preapproval of certain rate base additions and determining that the utility has provided a plan for reasonable and prudent improvements, that difference is not so great as Joint Petitioners suggest.

The OUCC's Mr. Seals suggested that under IC 8-1-30.3-5(d)(4), a plan would identify the projects, state which components of the water system would be affected (e.g. source of supply, water treatment, transmission/distribution mains, storage, metering facilities, etc.), identify when those projects would be commenced, estimate what the specific projects would cost, and explain

how the projects would address each problem. Mr. Seals testified this level of detail would allow the OUCC and the Commission determine whether the plan includes improvements that should be considered reasonable and prudent under IC 8-1-30.3-5(d)(4). (Seals, p. 5.) Joint Petitioners assert both the OUCC and NOW have read requirements into the statute that are not there. (Joint Petitioners' proposed order, p. 34.) Joint Petitioners argue that the OUCC and NOW are trying to apply a standard of proof only properly employed in TDSIC cases. Neither the OUCC nor NOW argued that the TDSIC standard applies in this case. Rather the OUCC and NOW have only argued that the standard established by IC 8-1-30.3-5(d) applies, and Joint Petitioners have failed to follow that standard. Joint Petitioner Indiana-American has failed to provide evidence on which the Commission can conclude Indiana-American presented a plan for reasonable and prudent improvements. Subsection 8-1-30.3-5(d)(4) establishes we must determine whether the acquiring utility has "provide[d]" a "plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility." IC § 8-1-30.3-5(d)(4). (Emphasis added.) The words "reasonable" and "prudent" are well used by the Commission and have particular meanings in ratemaking, as Joint Petitioner Indiana-American is undoubtedly aware. Whether an improvement refers to capital improvements or also improvements to operations, which Joint Petitioners asserted, a finding that a particular improvement is reasonable or prudent requires the Commission to know, among other things, both the cost of the improvement and how effective it may be. Neither Joint Petitioners case in chief nor its rebuttal case indicated what any particular "improvement" would cost. Without any evidence of the cost of an improvement, it is impossible for any finding that the improvement is reasonable and prudent. Without any evidence as to the effectiveness of an improvement, it is likewise impossible for any finding that the improvement is reasonable and prudent.

Mr. Hoffman also responded to the OUCC's criticism by asserting the statute only requires that we have a "plan" for "improvements" not "projects." (Hoffman rebuttal, p. 3) First, it is not that the utility must *have* a plan. Rather, it must *provide* a plan. IC 8-1-30.3-5(d). This suggests something more than a vague strategy for searching for a solution. As part of its prima facie case, the acquiring utility should *provide* something that can be evaluated by the consumer parties and the Commission. This requires some level of investigation followed by analysis resulting in a proposed course of action. Second, Mr. Hoffman places too much emphasis on the distinction between capital improvements and improvements to operations. It may be that the Indiana General Assembly intended "improvements" to refer in some cases to improved operations. But it certainly also intended improvements to refer to capital improvements. The statute cited by Indiana-American in this Cause refers to creating and maintaining "conditions under which utilities plan for and invest in infrastructure necessary for operation and maintenance while protecting the affordability of utility services for present and future generations of Indiana citizens." (Emphasis added.) Indiana American has never suggested that the solution to Charlestown's brown water problem will not require some level of capital improvements. And to the extent the solution to Charlestown's brown water problem requires an improvement that is not capital in nature, Indiana-American has not identified what that would be or what such improvement would cost let alone why it should be considered reasonable and prudent.

Using the language of the statute, the OUCC asked Joint Petitioner Indiana-American to provide all plans for reasonable and prudent improvements to the acquired system. The OUCC also asked Indiana-American to identify all costs. Indiana-American responded by providing a copy of page 18 of Mr. Hoffman's direct testimony, which in turn referenced the "possible solutions" he discussed in his testimony along with "likely distribution system improvements"

stemming from "further evaluation" and "the Saegesser Preliminary Engineering Report," which includes proposed improvements Mr. Hoffman acknowledged he had net yet studied. (Hoffman, p. 17.) Indiana-American stated that its plan consisted of the testimony of Mr. Hoffman, as included in Joint Petitioner's case-in-chief.

In its December 7, 2017 docket entry, the Commission asked Indiana-American to describe in detail how Indiana-American determined $7.2 million is the appropriate level of its prospective capital investment in the Charlestown's system and the basis for this determination. Two days before the evidentiary hearing, Indiana-American responded. Its response explained that the $7.2 million in capital investments was a term in the asset purchase agreement. Indiana-American also provided a table listing tasks such as "source of supply investigation," "service line renewals," and "meter replacements." Indiana-American stated that the items and estimates listed in the table "are conceptual because Indiana American has not yet collected data and information through its own operational and engineering study as Indiana American proceeds through the steps of its plan as described in Mr. Hoffman's testimony." Indiana-American added "Indiana American's plan consists of a series of steps, which will develop projects or changes in operations that will be the ultimate solutions to be implemented" adding "These steps and the decision trees from these steps are further explained at pages 5-6 of Mr. Hoffman's rebuttal testimony." Indiana-American added that "some investments are likely to obviate the need for others listed," and "some of the projects are also unrelated to Charlestown's water quality problems, but may be prudent investments for providing adequate, efficient, safe, and reasonable service. Indiana American will refine these concepts and estimates after acquiring the utility when it will collect data from operational and engineering study. In short, neither Mr. Hoffman's case-in-chief testimony, which is said to include Indiana-American's plan, nor his rebuttal testimony, nor Indiana-American's response to the docket entry indicate what Indiana-American is planning to do to solve Charlestown's water quality problems.

Indiana-American's indifference to any particular course of action is troubling. A "plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility" is an element of the relief Joint Petitioners have requested under IC § 8-1-30.3-5(d). Accordingly, any such plan should have been provided in Petitioner's case-and-chief. It was not. The only attempted quantification of Indiana-American's various "potential solutions" came in the response to the docket entry within two days of the final hearing. Among the reasons Indiana-American should make its *prima facie* case in its case-in-chief and not later is so the other parties to this proceeding will have due process. Another related reason is that assertions presented in case-in-chief testimony may be adequately challenged and tested. Indiana-American's estimate, which was provided after the close of evidence, was not and could not have been challenged and tested. But even on their face, the items listed do not withstand scrutiny. Indiana-American explained that the items and estimates listed in its table "are conceptual because Indiana American has not yet collected data and information through its own operational and engineering study as Indiana American proceeds through the steps of its plan as described in Mr. Hoffman's testimony." The response added that pages 5-6 of Mr. Hoffman's rebuttal testimony explain steps to develop projects and changes. At those pages, Mr. Hoffman summarized "the method Indiana American intends to follow." The only specifics included in the first phase of the method Indiana-American intends to follow are actions that could have been taken either after Indiana-American acquired access to Charlestown's operations through the Due Diligence Agreement (Public's CX-4) or after Indiana-American entered into the asset purchase agreement. Both afforded Indiana-American the opportunity to investigate Charlestown's system.

Those steps included in the method are not simply preliminary to finding a solution, they are preliminary to ownership. Indiana-American could have investigated source water and tested, evaluated and understood the concentrations of manganese. Not having undertaken these steps, Indiana-American does not know whether it will locate another source of supply, remove manganese through oxidation and filtration, remove manganese through adsorption and filter backwashing, or employ unidirectional flushing of the distribution system. In short, Indiana-American did not take advantage of its right to due diligence to determine a course of action.

The items Indiana-American listed in its table are neither comprehensive nor are they necessarily related to addressing Charlestown's brown water problem. In its accompanying explanation, Indiana-American added that "some investments are likely to obviate the need for others listed," and "Some of the projects are also unrelated to Charlestown's water quality problems, but may be prudent investments for providing adequate, efficient, safe, and reasonable service. Indiana American will refine these concepts and estimates after acquiring the utility when it will collect data from operational and engineering study." In his rebuttal testimony, Indiana-American witness Gary VerDouw said that section 5(d)'s requirements for "a plan for reasonable and prudent improvements to provide adequate, efficient, safe and reasonable service to customers of the distressed utility" must be read in conjunction with Ind. Code §8-1-30.3-6, which determines whether a distressed utility is "furnishing or maintaining adequate, efficient, safe and reasonable service and facilities." More specifically, he referred to whether the distressed utility, "due to necessary improvements to its plant or distribution or collection system or operations, is unable to furnish and maintain adequate service to its customers." (Emphasis added.) If a plan for reasonable and prudent improvements may be presented two days before the hearing, Indiana-American's table is neither sufficiently detailed nor sufficiently focused to constitute such a plan.

It is not the case that Indiana-American has investigated Charlestown's operations and determined that certain options need to be investigated further. In response to the OUCC's testimony, Mr. Hoffman said "it would be a waste of time and money to expect us to identify, engineer and design the detailed project list described by Mr. Seals." While it may be appropriate in some instances for an acquiring utility to wait until the transaction has closed to bear some expenses, it is clear in this case that Indiana-American has done little to investigate the course of action it should take to solve Charlestown's problems. Mr. Hoffman indicated Indiana-American has not yet begun to thoroughly test, evaluate and understand the raw water concentration of manganese. (Hoffman, p. 13) Mr. Hoffman testified manganese concentrations of Charlestown's individual wells could be investigated through test drilling, pumping and sampling, but he did not have such information. Mr. Hoffman stated the future outcome of such an investigation is uncertain at this time. Mr. Hoffman testified he had not yet studied the water age in the Charlestown distribution system. He added he also had not studied the improvements proposed in the Saegesser Preliminary Engineering report, though he expected that many of the proposed improvements could be valuable. (Hoffman, p. 17) Indiana-American has done nothing to show it has gained any understanding greater than Charlestown – a distressed utility – about what must be done to solve Charlestown's operational issues. Indiana-American made no strides to determine the most cost-effective solution. For the sake of not wasting Indiana-American's time and money, Indiana-American failed to provide a plan of improvements that can be evaluated for reasonableness and prudency.

The Indiana General Assembly enacted Chapter 8-1-30.3 in part to promote the planning of reasonable and prudent improvements. In exchange for providing a plan for reasonable and

prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility, IC 8-1-30.3-5(d) authorizes a utility company to petition the commission in an independent proceeding for relief under subsection 5(c) BEFORE the utility company acquires the utility property. Subsection 5(c) already requires an applicant under that section to support a finding that "the utility company will make reasonable and prudent improvements to ensure that customers of the distressed utility will receive adequate, efficient, safe, and reasonable service. Joint Petitioners' argument would make the evidence required under subsection 5(d)(4) indistinguishable from the evidence required to support a finding under subsection 5(c)(3). The law discourages us to conclude that the Indiana General Assembly intended subsection 5(d)(4) as a useless provision duplicative of subsection 5(c)(3). Subsection 5(d)(4) requires us to determine whether the acquiring utility company has provided a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility. We must conclude that this means more than simply determining whether the acquiring utility has the requisite intention and capability to solve problems. There is a difference between having the ability to find a solution to a problem and having a plan to solve a problem. We may also assumed that the general assembly intended more than simply our determination that the acquiring utility possesses the requisite financial, managerial, and technical capacity to solve a problem, otherwise it would have used those words. Instead, using plain language, it charged us with determining whether the acquiring utility has provided a plan for improvements that are reasonable, prudent, and will result in adequate, efficient, safe, and reasonable service. Despite its more than one year of time within which it could have understood Charlestown's problems and framed a solution, Indiana-American has elected to wait until the closing to prevent the possibility that it will have wasted its time and money.

In light of the foregoing we find Indiana-American has not provided a plan for reasonable and prudent improvements to provide adequate, efficient, safe, and reasonable service to customers of the distressed utility.

IV. INDIANA-AMERICAN HAS NOT SHOWN THAT THE PROPOSED SALE IS IN THE PUBLIC INTEREST

In its proposed order, Indiana-American argues that the Commission may not approve the sale without also approving the journal entry to be recorded by the prospective purchaser. Conversely, the Commission may not disapprove the journal entry (i.e. the relief afforded under IC § 8-1-30.3-5(c)) while authorizing the transfer of the assets.

> It is not an option for this Commission to approve the sale but decline to approve the journal entry to be recorded by the prospective purchaser. Whether or not Section 30.3-5 applies, our Order must provide the ratemaking treatment allowing the purchaser to book the full purchase price, incidental expenses and other costs of acquisition allocated in a reasonable manner among appropriate utility plant in service accounts.
>
> (Indiana-American's proposed order, pp. 23-24.)

Indiana-American seems to suggest any failure to satisfy IC § 8-1-30.3-5(d) necessarily forecloses its ability to close on the transaction. This seems to be contradicted by the clearest language of the regulatory framework – that IC § 8-1-30.3-5(d) only applies if the case is brought before the

acquisition has occurred; and if the closing has already occurred, then the applicant may apply under 5(c). Indiana-American asserts that the approval of the journal entry and the approval of the sale are inseparable under this statutory framework.

This may be correct. Joint Petitioners elected to proceed under IC 8-1.5-2-6.1(e)(1), which states that if (A) the municipality's municipally owned utility petitions the Commission under IC 8-1-30.3-5(d); and (B) the commission approves the municipality's municipally owned utility's petition under IC 8-1-30.3-5(c); the proposed sale or disposition is considered to be in the public interest. Joint Petitioners have in fact petitioned the commission under IC 8-1-30.3-5(d). But having failed to satisfy the requirements of 5(d)(4), the proposed sale or disposition should not be considered to be in the public interest. Therefore, we cannot approve the sale because we have not found that it is in the public interest.

Indiana-American also seems to suggest that even if the Commission finds Joint Petitioners have *not* met the requirements of IC 8-1-30.3-5(d), we must *still* approve the transaction requested. Joint Petitioners argued that "approval of the journal entry and the approval of the sale are inseparable under this statutory framework, regardless of whether the sale is approved under Section 30.3-5(d)." (Joint Petitioners' proposed order, p. 23) (Emphasis added.) Thus, Indiana-American seems to suggest that any finding by the Commission that a utility company has not met the requirements under IC 8-1-30.3-5(d) will have no effect on whether it should be authorized to acquire the assets or secure the relief authorized under Chapter 30.3. (In its proposed order, Indiana-American asks the Commission to find "Whether or not Section 30.3-5 applies, our Order must provide the ratemaking treatment allowing the purchaser to book the full purchase price, incidental expenses and other costs of acquisition allocated in a reasonable manner among appropriate utility plant in service accounts.") (IA PO, p.23) This suggestion must be rejected as it would nullify the clear language of section 5(d), which establishes the door that all applications for relief under Chapter 30.3 must pass through if the acquisition has not yet occurred.

Moreover, Joint Petitioners clearly state in their petition "Indiana-American and Charlestown are seeking approval pursuant to IC 8-1-30.3-5(d) of this transaction prior to closing on the acquisition. Petition, p.4. Joint Petitioners also stated that "The proposed acquisition is in the public interest because the elements of IC 8-1-30.3-5(c) have been satisfied and Joint Petitioners are seeking approval pursuant to IC 8-1-30.3-5(d)." (Petition, p. 5) Indiana-American now asserts that the explicit statute under which it requested relief is irrelevant because of its particular and vague interpretation of IC 8-1.5-2-6.1.

Indiana-American asserts the OUCC's recommendation that the ratemaking treatment under 30.3-5(d) be denied "ignores the requirements of Section 6.1(f)." Indiana-American added that "Those required authorizations are not dependent upon a finding under Section 30.3-5(d), but instead exist independently of the distressed utility statute but inseparable from the Commission's approval under Section 6.1(b)." (Joint Petitioners' proposed order, p. 24) (emphasis added.) Such assertion ignores the fact that section 8-1-30.3-5(c) may be found throughout section 6.1, in particular subsections 6.1(e)(1) and 6.1 (h). Clearly the requirements of both sections 8-1-30.3-5 and 8-1.5-2-6.1 must be read in para materia. In particular, IC 8-1.5-2-6.1(e)(1) is applicable to this proceeding and that subsection clearly references IC 8-1-30.3-5(d). Indiana-American's suggestion that Section 6.1 operates independently of IC 8-1-30.3-5(d) must be rejected.

Indiana-American's interpretation presents a maze of regulatory language all leading to the same conclusion – that we must grant the ratemaking treatment Indiana-American requires despite the most hapless attempt to comply with the explicit requirements of subsection 8-1-30.3-5(d).

Because we find Indiana-American has failed to comply with the conditions required by IC 8-30.3-5(d), and having declined to find that the sale is in the public interest, we need not address whether Joint Petitioners have satisfied the criteria of subsection 5(c). In particular, we need not address issues associated with Charlestown's Valuation Report. Nonetheless, we will explore certain aspects of the appraisal.

V. THE VALUATION REPORT

Joint Petitioners presentation of the Valuation Report. Joint Petitioner Charlestown's appraisal was presented by G. Robert Hall, Mayor of the City of Charlestown. He asserted the City followed the statutory process necessary for it to sell its water assets and appointed three appraisers to appraise the water system. He explained that the appraisal was initially provided to Charlestown in November 2016 but the City was not yet prepared to make a decision on the sale within the tight timeframes of the statute. He said that as a result, Charlestown continued its consideration of potentially selling its water utility and had the appraisers later review their prior appraisal, which he said they recertified and returned to Charlestown as of April 1, 2017. Mayor Hall sponsored a copy of the original appraisal as Attachment GRH-2 (Valuation Report) and a copy of the final appraisal recertification as Attachment GRH-3. Mayor Hall testified that the Common Council of the City of Charlestown ("City Council") set a public hearing on the appraisal for May 11, 2017 and provided notice of such hearing on April 11, 2017. Mayor Hall testified the City Council introduced the ordinance approving the proposed acquisition on July 3, 2017 and ultimately adopted the ordinance on July 6, 2017. The ordinance adopted by the City Council and the meeting minutes were included in the testimony of Charlestown witness Donna S. Coomer as Attachment DSC-8 and Attachment DSC-6, respectively.

Ms. Donna S. Coomer, Clerk-Treasurer of the City of Charlestown, testified regarding Charlestown's financial records related to its water utility. Ms. Coomer provided a financial history of Charlestown's water utility and explained that the water utility's capital improvements have historically been funded from non-utility funds. Ms. Coomer also testified regarding Charlestown's capital asset ledger and sponsored it as Attachment DSC-5. She explained on cross examination that the capital asset ledger is a document she prepares with the help of her deputy and the State Board of Accounts. She noted that due to the lack of records prior to 2000, it has been difficult to create this document and testified that she would expect the appraisal in this Cause to be a more accurate assessment of Charlestown's assets, because it was conducted by disinterested professionals who value assets for a living.

Mr. Prine testified that Indiana-American proposes to acquire all of the property that is subject to the City's appraisal sponsored by Mayor Hall as Attachment GRH-2, apart from the well field and related equipment and assets, at a purchase price of $13,403,711. He testified that the purchase price was determined based upon the appraised value of the Charlestown Water System as determined by the statutorily appointed appraisers. Mr. Prine stated that consummation of the transaction is conditioned on obtaining certain approvals from the Commission, including with respect to recognition of the full purchase price plus transaction costs in net original cost rate base, and the application of Indiana-American's Area One rates to Charlestown customers.

None of the engineers who prepared the Valuation Report provided testimony in the case. Joint Petitioners provided no witnesses that explained how the appraisal was conducted, why the methods it employed should be considered appropriate, or why the simplifying factual assumptions should be considered reasonable.

OUCC's Analysis of the Valuation Report. Mr. James T. Parks, P.E., Utility Analyst II with the OUCC, testified regarding the appraisal in this Cause. Mr. Parks presented evidence of flaws in the appraisal process which resulted in a Valuation Report that failed to account for asset condition, relied on understated asset ages, overstated total replacement costs and included assets that will not be acquired. (Parks at 3 and 5.) Mr. Parks testified Charlestown started its water system in 1937 and the system grew during World War II when the Indiana Army Ammunition Plant fostered economic and population growth. (*Id.* at 31.) He stated Charlestown installed large portions of its water system during this growth period with its' Capital Asset Ledger showing water main additions totaling 126,000 feet between 1935 and 1938. (*Id.* at 23 and 31.) Mr. Parks testified that during his review of the Valuation Report he noticed it did not list in Table 1 any pipe from the 1930s and 1950s, which is inaccurate, since those decades were growth periods with documented main extensions. (*Id.* at 31.)

Mr. Parks noted Charlestown reports its water system records are nearly nonexistent. (*Id.* at 4.) He stated the appraisal is not an accurate list of assets being sold to Indiana American because the appraisers did not include actual 0.75-inch, 1-inch, 1.25 inch, 1.5 inch, and 3-inch pipe. (*Id.* at 34.) Mr. Parks testified Charlestown has over 40,000 feet of functionally obsolete small diameter water mains and over 45,000 feet of galvanized iron water mains associated with Charlestown's long standing discolored water problem with a shorter expected useful life of around 60 years because they are subject to corrosion. (*Id.* at 24 and 34.)

Mr. Parks testified that the appraisers calculated depreciation to determine present value based solely on asset age. (*Id.* at 11.) As such, the Valuation Report does not account for asset condition. (*Id.* at 3.) Mr. Parks said it was unclear from the Valuation Report how the appraisers determined the age of Charlestown's water mains. He noted Saegesser Engineering did not provide pipe ages to the appraisers and the appraisers had little information on ages except what Charlestown utility staff provided orally. (*Id.* at 27 and 28.) Mr. Parks disagreed with the water main and service line ages used in the Valuation Report. (*Id.* at 24.) He said it appears the appraisers made simplifying assumptions that had the effect of distributing water main installation evenly throughout the decades (excluding the 1930s and 1950s). (*Id.* at 28.) Mr. Parks testified the appraisers used fire hydrant dates to establish water main ages, but he noted Charlestown has replaced more than half of its fire hydrants since 2000. (*Id.* at 27 and 29.) He stated that in older water distribution systems, where hydrants but not water mains have been replaced, relying on hydrant age to establish the ages of water mains can create erroneous results that understate water main ages and overstate present values. (*Id.* at 28 and 29.) To determine water main installation years, Mr. Parks located Charlestown topographic maps, scanned news articles available online through the Indiana State Library from *The Charlestown Courier* and two water system maps that the appraisers did not have. (*Id.* at 2 and 35.) He relied on newspaper articles from the 1940s, 1950s, and 1960s reporting examples of main extensions installed earlier than the timeframes the appraisers had assumed. These included the 1953 asbestos cement water main to Speed, IN, the 1955 North Charlestown extension, and the Lake View and High View subdivisions. (*Id.* at 32.) Mr. Parks' review of water system and topographic maps indicated the Glendale subdivision water mains are probably from the 1970s, but not later than 1981, instead of 2003, the date listed on the

appraisers' 2016 map. (*Id.* at 33.) Using the Speed extension's correct age, Mr. Parks calculated a $240,500 reduction in present value for this water main segment alone. (*Id.* at 32.) Mr. Parks testified that using correct ages will decrease the distribution system present value further, but he did not quantify the reduction. (*Id.* at 33.)

Mr. Parks stated the appraisers also made a simplifying assumption that 50 percent of the services' useful life remained since service line age and sizing information was unavailable but that the appraisers did not support the reasonableness of their assumption. (*Id.* at 22 and 23.) Mr. Parks disagreed that aging of services could not be determined and described the analysis he made for service line ages. He testified that with some effort, services age can be estimated by examining customer additions to make a more reasonable present value estimate and noted that when the flaws that arise due to the Appraisal's simplifying (and inaccurate) assumptions are corrected, the "Present Value" of Charlestown's "Water Services" is reduced by $955,000. (*Id.* at 23.)

Mr. Parks testified Charlestown's ground storage tank's ("GST") present value is overstated by $486,500 because it does not account for the tank's actual age or poor condition and is based on a $1,310,000 replacement cost that appears inflated. (*Id.* at 6 and 7.) Mr. Parks testified the appraisers did not provide supporting documentation for their 2016 GST replacement cost but indicated it was based on a call to Pittsburg Tank & Tower. (*Id.* at 13.) In contrast, Mr. Parks provided written budgetary quotes from two tank suppliers, including the same tank supplier contacted by the appraisers, which produced a 31% lower 2017 budgetary cost. He pointed out the OUCC's budgetary quotes are conservatively high because they don't reflect lower prices achievable through competitive bidding. (*Id.*) Mr. Parks estimated the GST's total replacement cost at $1,026,000 for the GST, sitework, piping, controls, engineering and permitting. (*Id.* at 14.)

Mr. Parks showed the GST was built 12 years earlier than assumed by the appraisers as documented by news articles and a 1963 dedication plaque. (*Id.* at 6 and 7.) He testified his review of the 2004 GST inspection report, historical photographs, prior Causes, and his observations shows Charlestown has not maintained the GST or its 1978 258,000 gallon standpipe. (*Id.* at 7 - 11.) He recommended considering these two tanks to have no more than 60 year useful lives. (*Id.* at 12.) He supported a 60 year service life by referencing the Commission's storage tank component (1.67%) in the composite depreciation rate, Wisconsin Public Service Commission benchmark depreciation rates (1.9%), and Indiana American's current (3.13%) and proposed (2.01%) depreciation rates for storage tanks. (*Id.*)

Similarly, Mr. Parks noted the 500,000 gallon Gospel Road elevated tank is less than ten years old and is in good condition but disagreed with the appraisers' replacement cost and present value. (*Id.* at 17 and 18.) He obtained written 2017 budgetary quotes from Phoenix Fabricators, who constructed the tank in 2007, and Pittsburg Tank & Tower that were lower than the replacement cost assumed by the appraisers. Mr. Parks testified that decreasing the vendor cost but keeping the appraisers' assumed 75 years useful life and 10% engineering fee, he estimated the elevated tank's present value at $1,081,000 which is $226,000 below the Valuation Report's value. (*Id.*)

Mr. Parks provided Charlestown's Water Treatment Plant Main Building property record card prepared by the Clark Co. Assessor describing it as a 1963 one-story 720 square foot concrete block building with concrete floor, flat roof and quality grade D+2, meaning it is devoid of any architectural detail, constructed at the lowest possible cost while meeting minimum codes with moderate quality interior finishes, fixtures, and climate control systems. (*Id.* at 19.) Mr. Parks

testified he disagreed with the $400,000 replacement cost and $116,000 present value for the Water Treatment Plant Main Building. (*Id* at 21 and 22.) The Valuation Report listed this cost without support but in response to OUCC discovery, Charlestown reported the appraisers utilized their experience to determine the replacement costs broken out as $250,000 for structural, $100,000 for electrical and instrumentation, and $50,000 for mechanical components. (*Id.* at 20.)

Mr. Parks reported the OUCC requested copies of the two independent appraisals to review values each appraiser independently determined and how possible valuation conflicts such as the Pump Building were resolved but the independent appraisals were not provided to the OUCC. He opined that independent appraisals are useful because with more than one appraiser, asset valuations can be reviewed against each other to determine data gaps requiring more information gathering or research that will lead to accurate, fair and reasonable asset values (*Id.* at 20 - 23.) Mr. Parks testified he calculated a $120,000 replacement cost and a $35,000 present value for the Pump Building by using the replacement cost new calculations made by the Assessor's office, adding $50,000 for mechanical and electrical systems, and then depreciating the replacement cost to account for the building's age. (*Id.* at 22.)

Mr. Parks further criticized the appraised value of the fire hydrants and mains, stating that both the present value and age of fire hydrants used in the appraisal is inaccurate or at best unreliable. (*Id.* at 35.) Mr. Parks testified that the methodology used to value the Charlestown System's assets included flaws that affected the values across most categories of plant. He stated that of particular concern is the Valuation Report which did not incorporate into its conclusions the poor condition of certain assets making up the Charlestown Water System. Mr. Parks further testified that the values presented in the Valuation Report in Tables 1 and 2 were the results of flawed assumptions, including unsupported cost estimates that he said cast doubt on both the Replacement cost and the "Present Values" on which the utility purchase is based. (*Id.* at 35 and 36.)

Mr. Carl N. Seals, Utility Analyst with the OUCC suggested that while the system might have been evaluated by other metrics, including investment, final product or plant records, that the only measure available to OUCC staff was the apparent, visible condition of above-ground plant. According to Mr. Seals, this was due in part to Charlestown's lack of records. From his inspection of the above-ground plant, Mr. Seals noted that the system appears to be inconsistently maintained, and included pictures of plant in his direct testimony[3]. Mr. Seals then pointed out the lack of plant investment by Charlestown over the last sixteen years and explained that it has not been re-investing its depreciation back into plant over the last several years.[4] Mr. Seals then showed that in Cause No. 44222, Indiana-American recognized the condition of plant in its recommended purchase price of the Mecca system, adjusting the purchase price down from a calculated $587,085 to $445,000 to recognize the number of customers and the improvements needed.[5]

Finally, Mr. Seals addressed the ages of water meters as represented in Charlestown's Valuation Report. In his testimony, he explains that the ages of meters as reported by Charlestown employees during his site visit was different from the ages shown in the Valuation Report. Meter bodies were reported by Charlestown personnel to have been installed in 2001, with heads being replaced in 2007 for radio reading. The Valuation Report, he noted, suggests meters being installed

[3] Seals direct, p 9.
[4] Seals direct, p 10.
[5] Seals direct, p 11.

in 2010 with a 15-year life. As a result of this, and of Joint Petitioner Saegesser's recommendation that meters be replaced in 2017 or 2018, Mr. Seals reasoned that the meters have a much shorter proposed life than reflected in the Valuation Report.[6]

The OUCC's Edward Kaufman, Assistant Director of the OUCC's Water-Wastewater Division testified that the Valuation Report includes mathematical, mechanical, and theoretical flaws. Mr. Kaufman also asserted the appraisal lacked support in many key areas, making it difficult to evaluate its accuracy and appropriateness. Mr. Kaufman noted the asset balances in the Valuation Report does not match the asset balances in the City's verified IURC Annual Report. He explained that the many flaws in the Valuation Report raised questions regarding the "Total Replacement Cost", and "Present Value" of the Charlestown Municipal Water System. Mr. Kaufman's concerns were broken down into several key categories. Mr. Kaufman explained that the Valuation Report depended on several simplifying assumptions, such as the use of decades that were unnecessary or unreasonable. Mr. Kaufman's testimony confirmed that the use of decades (instead of specific years) skewed the results of the Appraisal, but also complicated any review to determine if the Appraisal was appropriate. Mr. Kaufman then described how the Appraisal (distribution system) was approximately 2 years stale and that the use of stale data caused the valuation to be overstated by approximately $620,000. Mr. Kaufman also disclosed that the Appraisal relied on hard coded data. He specifically pointed out that the use of hard coded data overstated the condition of the meters Indiana American was purchasing. The calculations in the Appraisal assumed meters were installed in 2010, while the evidence showed that meter heads were installed in 2007. Mr. Kaufman also pointed out the Appraisal was both internally and externally inconsistent. Mr. Kaufman than affirmed that the Appraisal did not consider the condition of the plant (Attachment ERK-8). Mr. Kaufman concluded this portion of his testimony by advising the Commission that the Appraisal relied on a single approach and did not have the level of detail this Commission has seen in previous Appraisals, such as Indiana American's acquisition of the New Whiteland system. Mr. Kaufman pointed out that the Appraisal in this cause was much shorter than previous appraisals presented to this Commission.

Joint Petitioners Testimony Rebutting the OUCC's Rebuttal Testimony. Indiana-American's Mr. Hoffman responded to Mr. Parks' criticisms of the appraisal. Mr. Hoffman stated that while Mr. Parks criticized the appraisers' appraisal, he made no final recommendation for the Commission to change the appraisal value that was approved by the City of Charlestown and used as the basis for the valuation of the acquisition. He added that despite Mr. Parks spending approximately 200 hours working on the case, he did not testify what his appraised value would be or even that his appraised value would have been less. Mr. Hoffman criticized Mr. Parks' overall approach to criticizing the appraisal, noting that Mr. Parks frequently attacked the appraisers' opinions and assessments, in favor of his own view as if there was a single "right answer" regarding the value of an asset. Mr. Hoffman stated that there is not a single right answer that every appraiser must arrive at for a given asset, and noted that different qualified appraisers appraising an asset can arrive at different valuations based on their experience, review of information and judgments. Mr. Hoffman further criticized Mr. Parks' overall approach, because Mr. Parks frequently criticized the appraisers' asset valuations as being overstated, but never once criticized the valuation for any asset for being understated. In addition to criticizing Mr. Parks'

[6] Seals direct, p 12.

overall approach, Mr. Hoffman also provided detailed responses to Mr. Parks' criticism of the valuation of specific assets.

Mr. Hoffman stated that Mr. Parks appeared to seize upon the language in the Commission's order in *Georgetown* indicating that parties in acquisition proceedings have an opportunity to present evidence that the appraisal was not conducted "appropriately." Mr. Hoffman testified that he does not believe Mr. Parks' approach to criticizing the appraisal is what the Commission had in mind when it indicated that it is appropriate to consider whether the appraisal was "conducted appropriately." He explained that when the Commission opened up the proceedings to evidence as to whether the appraisal was conducted appropriately, he believed the Commission was referring to whether the statutory requirements of appointing three disinterested, qualified appraisers to conduct an appraisal have been met.

Mr. Hoffman testified that the appraisal in this Cause was conducted appropriately, because the City of Charlestown appointed three disinterested, qualified appraisers to conduct the appraisal. Mr. Hoffman testified both in rebuttal and on cross examination that Mr. Parks' criticism is biased and noted that neither Mr. Parks, nor any of the other OUCC's witnesses, meet the statutory qualifications to conduct an appraisal. Mr. Prine echoed Mr. Hoffman's rebuttal testimony on cross examination and reiterated that none of the OUCC's witnesses are disinterested persons per the meaning of the statute. For these reasons, Mr. Hoffman testified that Mr. Parks' testimony criticizing the appraisal is ultimately irrelevant to the Commission's determination of the reasonableness of the purchase price in this Cause. He recommended that the independent qualified appraisers' valuation be recognized as complying with the statute.

Mr. Gary VerDouw also responded to the OUCC's criticisms regarding the appraisers' appraisal in this Cause. Mr. VerDouw noted that despite all of the concerns raised in the OUCC's testimony, the OUCC made no final recommendation to change the appraised value. Mr. VerDouw quantified the impact of the OUCC's collective criticisms and testified that the total effect would have reduced the appraised value by $1,966,500. Mr. VerDouw testified that he is not suggesting the Commission should reduce the appraised value by that amount, because the OUCC has provided no basis to reduce the appraised value. He reiterated that the appraisal satisfies the requirements of Ind. Code § 8-1.5-2-5, as it was conducted by three professionals possessing all of the qualifications required by statute. Mr. VerDouw further testified that the OUCC witnesses are merely second guessing the work of qualified appraisers and have provided no evidence that they meet the qualifications to provide an appraisal themselves.

Commission Discussion and Findings. In their proposed order, Joint Petitioners ask us to find that the purchase price is reasonable. Joint Petitioners suggest we are powerless to make any finding that contradicts that conclusion because the purchase price of Charlestown's nonsurplus property is based on an appraisal signed by any two of the appraisers. (VerDouw Rebuttal, p. 10) Joint Petitioners state the appraisers who produced the Return of Appraisement are not encumbered by any "prescriptions of methods, let alone methods prescribed after the fact by the OUCC." Joint Petitioners' proposed order, p. 29. Joint Petitioners assert that so long as two qualified appraisers have agreed on an appraised value, the Commission must find the purchase price is reasonable. Joint Petitioners argue that if we engage in any other inquiry into the appraisal we are "outside our lane."

Somewhat inconsistent with the foregoing premise, in its proposed order, Joint Petitioners suggested we criticize the OUCC for failing to provide "information that would help us to make

our determination as to the reasonableness of the purchase price" and not explaining what we should do with the issues their witnesses have raised in making the findings we are required to make. Thus, on the one hand, Joint Petitioners criticize the OUCC's witnesses as not being qualified to produce their own appraisal. (Joint Petitioners do acknowledge that Mr. Parks is a licensed engineer and therefore meets that qualification.) On the other hand, Joint Petitioners criticize the OUCC's witnesses for not producing an appraisal of their own on which a purchase price could be based.

Neither criticism is valid. In the first case, there are no statutory qualifications required for identifying flaws in an appraisal. In the second case, the OUCC is not responsible for presenting a purchase price. In its December 4, 2017 response to the Commission's docket entry, the OUCC stated it was not proposing approval of any particular purchase price in this cause since IC 8-1-30.3-5 does not *explicitly* contemplate the Commission establishing a purchase price different from the amount agreed upon by the buyer and the municipality. The OUCC suggested that subsection 8-1-30.3-5 seems to contemplate either approval or rejection of the request to book the purchase price (cost differential plus net book value) as original cost. The OUCC added that if the Commission determines that the purchase price is not reasonable (See IC 8-1-30.3-5(c)(5)), it should disallow the ratemaking relief requested under IC 8-1-30.3-5(c).

Joint Petitioners' suggestion that the Commission and the OUCC should accept the appraisal without question is contradicted by the Commission's findings in Cause No. 44915 involving Indiana-American's acquisition of Georgetown's nonsurplus property. In the final order, the Commission found that the criterion had been met after noting that the OUCC had the opportunity to address any concerns about the appraisal through discovery and that it offered no evidence to dispute that the purchase price is equal to the value set forth in the appraisal or that the appraisal was not conducted appropriately. This suggests the OUCC should examine the quality of the appraisal, not just the pedigree of the appraisers. The OUCC explained in its response to our docket entry that the purpose of the OUCC's testimony was to explore and discuss whether the appraisal was conducted appropriately. The OUCC explained the OUCC does not propose a particular purchase price because the OUCC did not perform its own complete appraisal of all of Charlestown's non-surplus property. While the OUCC's analysis identifies flaws in the appraisal process that resulted in certain overstatements of the value of various components, the OUCC's inquiry did not produce a final value. The OUCC suggested that if it were to produce a purchase price value for ratemaking purposes, it would need to reflect an amount that excludes the overstatement of values that the OUCC quantified in its testimony. The OUCC added it would also need to quantify other flaws it identified, to which the OUCC did not ascribe a dollar value. (The OUCC further explained it did not have access to and was not provided all documents Charlestown may possess that may provide more insight as to valuation. For instance, the OUCC noted it did not have the independent valuations of the assets from both engineering firms as referenced on page 2 of the Valuation Report.) Those documents were ultimately filed with the Commission pursuant to our docket entry and entered into evidence without objection.

While the OUCC did not provide an appraisal that represents, what it believes the appraised value of Charlestown assets should be, OUCC witnesses Carl Seals, James Parks PE, and Edward Kaufman identified various flaws in Joint Petitioners' Appraisal. The OUCC's response to IURC Data Request Question 6 stated as follows:

> If the OUCC were to produce a purchase price value for ratemaking purposes, it would need to reflect an amount that excludes the overstatement of values that the

> OUCC quantified in its testimony and which it believes exceeds $2.8 million. The OUCC would also need to quantify other flaws it identified, to which the OUCC did not ascribe a dollar value. (Emphasis added).

We will not re-iterate here the various components that make up the $2.8 million figure. However, Public's CX-5, which was a document prepared by Indiana-American, shows just under $2.0 million of deficiencies identified by the OUCC. However, this figure if anything appears to be conservatively low. Mr. Kaufman explained how the Appraisal was stale and overstated the Appraisal by $620,000. Moreover, the Appraisal includes $192,300 for meters, Public's CX-10 demonstrates that the meters will be replaced within the first two years of Indiana American's ownership, while the Appraisal values the meters as though they have 10 years of remaining life. The combination of these adjustments add up to approximately $2.8 million. But even this is likely to be conservatively low. The largest value of the Appraisal is from Charlestown's distribution system. The OUCC identified flaws in the distributions system's value, but the flaws monetized by the OUCC do not address the distribution system. Flaws in the appraised value of Charlestown's distribution system are the most likely area of overstated asset value.

In its proposed order, Joint Petitioners argue that "were the Commission to accept the OUCC's approach, the message we would be sending to municipalities is that in addition to possessing the licensing requirements expressed in the statutes, the appointed appraisers now must consult old newspaper accounts, IURC dockets, and tax assessment roles." We have not been asked to accept the OUCC's approach. Rather, the OUCC has done its own investigation of the facts and located additional information to show that Charlestown's appraisers' methodology and simplifying assumptions resulted in an overstatement of the value of the utility's assets. On the other hand, if the qualified appraisers had employed the OUCC's approach, it would have resulted in a significantly lower appraised value and lower purchase price to the benefit of Indiana-American's ratepayers. We make no finding that the OUCC's approach should be employed in this or any other case. We only find that the appraisers' approach did not result in the savings that a more accurate approach would have produced.

For example, Joint Petitioner Indiana-American agreed that the 1.5 MG ground storage tank was not installed in 1975 as the appraisal had indicated, but was constructed in 1963 or 1964. (Public's CX-10) Indiana-American added that the age of the tank is not the determining factor in an appraisal of a tank's value. It said condition, replacement cost, and remaining life is much more important to assessing the value of the asset. Thus, Indiana-American said condition of the asset should be used to determine value and not age of the assets. However, Charlestown advised that "Percent depreciated was based solely on the *age* of the specific plant." (Emphasis added.) (Public's CX-11.) Thus, the appraisals Joint Petitioner Indiana-American uses to justify the purchase price uses a methodology Indiana-American acknowledges should not be used. Indiana-American maintains it is condition and not age that should be used to determine value. But the appraisers relied solely on age and did not consider condition. And where the appraisers relied solely on age to determine useful life for purposes of their valuation, the appraisers relied on incorrect ages. A fact the OUCC's witnesses were able to determine through their efforts, and which were undisputed. In another example, the Valuation Report valued the 8-inch asbestos cement water main to Speed Indiana based on the premise it was constructed in 1967, but Mr. Park's investigation indicated it was constructed in 1953, as Indiana-American acknowledged. (Public's CX 10, OUCC DR 13.3)

It is troubling that the prospective purchaser of this distressed utility agreed to pay the purchase price based on an appraisal without apparently doing its own evaluation of the quality and accuracy of the appraisal. Joint Petitioners maintain the Valuation Report established the minimum purchase price of the nonsurplus property, and the City of Charlestown could accept no less. But it is not *also* the case that Indiana-American must agree to pay that price. Typically, it would be up to the buyer to scrutinize the basis of an offer. Indiana-American seemed not to be concerned with the quality of the appraisal only that it was produced and signed by two appraisers with the correct qualifications. Indeed, Indiana-American agreed to accept a purchase price even though it was based on a remaining useful life that did not consider the condition of the assets – a factor Indiana-American said was more important than age. But to establish useful life, the Valuation Report relied only on the age of assets, a factor which Indiana-American considers "not the determining factor in an appraisal of an assets value." (Public's CX-10) Such reliance is more confounding since the City did not have records to establish the age of the assets did not exist, requiring estimated dates of service that in some cases were more than ten years off. (Public's CX-10, OUCC DR 13.3)

Normally, where a price is negotiable, the seller seeks to get the highest price for its product or service and the buyer seeks to pay the lowest price to obtain the product or service. So in this transaction Charlestown should be seeking the highest price possible and Indiana-American should be seeking the lowest price possible. That did not occur in this proposed transaction. Through rebuttal testimony and its oral testimony Indiana-American Water made clear that it had no interest in negotiating for a lower purchase price. It is somewhat ironic that the prospective purchaser of the assets is critical of an investigation that points to a lower purchase price. If the OUCC has a bias toward lower purchase prices as Mr. VerDouw suggested, one may wonder why the purchaser of these assets does not also have an interest in purchase prices that are based on accurate dates of service and actual condition. Indiana-American has defended an appraisal process that results in a higher purchase price, even when the process relied on dates of service shown to be inaccurate. As it explained during cross-examination, Indiana-American made no attempt to review or question the appraisal. Moreover, when the OUCC challenged aspects of the Appraisal, it was Indiana-American, not the City of Charlestown, that defended the appraisal. Additionally, during cross-examination, Indiana American's witness Gary VerDouw testified that the only negative consequence to Indiana American of a lower purchase price was a lower rate base and a subsequently lower return. As a purchaser of utilities, Indiana-American seems to be at least indifferent to paying a higher purchase price because of "simplifying assumptions" in an appraisal.

Joint Petitioners argue the quality of the appraisal, the accuracy of the appraisal, the scope of the appraisal, the methodologies employed are all outside the purview of this Commission. Assuming compliance with the specific statutory requirements under IC 8-1.5-2-4 and 5, Joint Petitioners argue in essence that no defect of the appraisal itself disqualifies a purchase price established by that appraisal. Such defects could include as in this case valuing property without regard to their condition, valuing property based on faulty and disproved assumptions about age; and valuing property the acquiring utility intends to replace. Other defects could include clear, undisputed and material math mistakes; transposition of numbers; the appraisal including property that the Municipality did not own; omitting property that will be conveyed; evidence on the record that contradicts the appraisal; and double counting of property.

Joint Petitioners assert the Commission needs to stay within "our lane" even when the appraisal seems to be traveling on the wrong side of the road. If we must stay within our lane, and if the OUCC's concerns must be disregarded because as Joint Petitioner's argued, it has a bias toward lower rates, and if Indiana-American is indifferent to higher purchase prices, this begs the question -- Who is to establish standards and decide as a matter of policy whether an appraisal has used appropriate methodologies? Joint Petitioners have essentially argued this is to be no one except the appraisers themselves. And as Mr. Hoffman's responses to cross-examination by NOW's attorney indicated, so long as they do not stray beyond the ethics of their own profession, any appraisal signed by two of the qualified appraisers is a good and valid appraisal for ratemaking purposes. Based on Joint Petitioners' paradigm, no party has the incentive or the authority to secure lower purchase prices. Joint Petitioners' interpretation of the law can only result in higher and higher valuations that will result in higher rate base additions resulting in higher rates.

Because Joint Petitioners have not met the requirements of IC 8-1-30.3-5(d), we need not specifically address whether and to what extent we must find a purchase price based on an appraisal is reasonable even if we have serious concerns with the quality of the appraisal. But we leave the subject by noting that there may be instances where an appraisal has so many defects or a material defect that will cause us to conclude that a purchase price based on that appraisal should not be considered reasonable.